

COMMUNITY REDEVELOPMENT AGENCY AGENDA REPORT

SUBJECT: A RESOLUTION OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF CALEXICO, CALIFORNIA, APPROVING THE LEASE OF AGENCY PROPERTY TO EDWARD DEL RIAL

AGENDA DATE: October 7, 2008

PREPARED BY: Rosalind Guerrero, Redevelopment Director

RECOMMENDATION: Hold public hearing and allow public input. Approve resolution authorizing the lease of land to Edward Del Rial and allowing the Executive Director to execute the lease agreement.

BACKGROUND INFORMATION: (Prior action/information) The Redevelopment Agency owns the property at 303-333 Cesar Chavez Blvd. The uses on the property are a farm labor business office, tire sales shop, and a mini mart with sales of food, drinks, and miscellaneous items.

DISCUSSION (Current consideration): Edward Del Rial intends to continue the use of the property as the current uses of a mini mart, farm labor business office, and tire sales shop. The proposed lease is for five (5) years and the monthly rental amount is \$3,000.00. Mr. Del Rial has also proposed that he will improve the property by repairing the existing buildings, replacing the deteriorated fencing and clean up of the property. The improvements to be made to the buildings are repairing the roof structures, interior and exterior painting, repairs to electrical and heating and cooling systems repair or replacement.

Currently, there are two businesses operating on the property which were in sublease agreements with the prior lessee of the land. Mr. Del Rial has begun negotiations with them and will be subleasing to them. Mr. Del Rial acknowledges they are currently using the property and is not requiring the Agency to evict or otherwise remove them prior to execution of this lease.

The Health and Safety Code allows the Agency to lease land without a public bidding process as long as the sale is considered at a public hearing which has been advertised for two weeks prior to the hearing. This public hearing was properly advertised. The resolution attached hereto allows the Executive Director of the Agency to execute the lease agreement. Staff recommends that the Agency Board hold the public hearing, accept public comment, and approve the attached resolution, if appropriate.

Attachments:

- 1. Proposed Resolution to Authorize the Land Lease**
- 2. Proposed Lease**

Agenda Item No. _____

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RESOLUTION NO. 2008-_____

**A RESOLUTION OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE
CITY OF CALEXICO, CALIFORNIA, APPROVING THE LEASE OF AGENCY
PROPERTY TO EDWARD DEL RIAL**

WHEREAS, Health and Safety Code section 33430 allows the Community Redevelopment Agency to lease real property in any way it chooses as long as the Agency holds a duly noticed public hearing; and

WHEREAS, the Agency held a public hearing and considered any public testimony on October 7, 2008 regarding the proposed lease agreement between the Agency and Edward Del Rial for the lease of certain land more particularly described as 303-333 Cesar Chavez Blvd., Calexico, Assessors Parcel No. 058-400-061 and as detailed in the subject Lease; and

WHEREAS, the public hearing was properly advertised in the Imperial Valley Press twice in the two weeks prior to the hearing; and

WHEREAS, the Lease is beneficial to the Agency because the lessee has agreed to improve the property by doing interior and exterior repairs to the buildings , roof structures, boundary fencing, clean up of the area; and

WHEREAS, the Lease contains the applicable Health and Safety Code Sections 33430 *et. seq.* requirements for the lease of Agency property; and

WHEREAS, the Agency Board now wishes to approve the Lease.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF CALEXICO AS FOLLOWS:

SECTION 1. The Board finds that the above-listed recitals are true and correct.

SECTION 2. The Agency Board hereby approves the Lease between the Agency and Edward Del Rial because it is in the best interests of the Agency and the community.

SECTION 3. The Agency further directs staff to take all necessary steps to implement the Lease and authorizes the Executive Director to execute the Lease and all other documents associated with the Lease.

PASSED, ADOPTED, AND APPROVED by the Community Redevelopment Agency of the City of Calexico at the regular meeting this 7th day of October, 2008.

LOUIS FUENTES, Chairman

ATTEST:

RALPH VELEZ, Secretary

APPROVED AS TO FORM:

JENNIFER M. LYON, Agency Counsel

STATE OF CALIFORNIA)
CITY OF CALEXICO) ss.
COUNTY OF IMPERIAL)

I, _____, City Clerk of the City of Calexico, do hereby certify under the penalty of perjury, that the foregoing Resolution No. _____, was duly adopted by the Agency Board at a meeting of said Agency held on the 7th day of October, 2008, and that it was so adopted by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

LOURDES CORDOVA, City Clerk
City of Calexico

RETAIL LEASE

THIS RETAIL LEASE ("Lease") is entered into as of 7th day of October, 2008 between Edward Del Rial ("Tenant") and Community Redevelopment Agency of the City of Calexico ("Landlord").

RECITALS

- A. Landlord is the owner of real property located at 303-333 Cesar Chavez Blvd., Calexico and the improvements located on the real property (collectively, "Property").
- B. Tenant desires to lease from Landlord and Landlord desires to lease to Tenant as shown on the plan of the Property attached as Exhibit A ("Leased Premises").

NOW, THEREFORE, for good and valuable consideration the receipt and adequacy of which are acknowledged, the parties agree as follows:

Section 1. Lease of Premises

Landlord leases to Tenant and Tenant leases from Landlord the Leased Premises on the terms and conditions set forth in this Lease. Tenant acknowledges that there are two parties who were previously subleasing the property from Landlord's prior tenant (Ortega). Tenant intends to sublease to these same two parties and understands that they are currently on the property without a valid sublease. Tenant is not requiring Landlord to formally evict/remove such parties prior to executing this lease and Tenant agrees that Tenant will provide Landlord with copies of any written subleases between Tenant and these parties. Tenant agrees that failure to remove these parties prior to execution of this lease will not be deemed a default of this Lease by Landlord.

Section 2. Use

Tenant agrees to use the Leased Premises for the purpose of operating retail and commercial business as allowed by the city's zoning ordinance and for no other use. Tenant shall not sell the lease.

Section 3. Term

The term of this Lease shall be for a period five (5) years, commencing on October 7, 2008, and unless terminated sooner in accordance with this Lease, ending on September 30, 2013. Should the Term commence a date other than the first day of a calendar month, the Term shall be extended by this fractional month.

Section 4. Rent

(a) Tenant shall pay to Landlord during the Term of this Lease as monthly rental for the Leased Premises the sum of \$3,000.00 per month, which shall be paid in advance on the first day of each calendar month ("Monthly Rent"). Should the Term commence on a date other than the first day of a calendar month, Tenant shall pay Monthly Rent for the fractional month on a per diem basis (calculated on the basis of a thirty (30) day month until the first day of the month, and thereafter the Monthly Rent shall be paid in equal monthly installments on the first day of each and every month in advance. All rentals to be paid by Tenant to Landlord shall be in lawful money of the United States of America and shall be paid without deduction or offset, prior notice or demand at the addressed designated in Section 28. Tenant agrees that it would be impracticable or extremely difficult to fix the actual damage to Landlord accustomed by the failure of Tenant to make any payment of rent within ten (10) days of the due date and, therefore, Tenant agrees that if any payment of rent is not made within ten (10) days of its due date, Tenant agrees to pay Landlord a ten percent (10%) late charge. This is an absolute net lease to Landlord with tenants paying their pro rata share of all expenses pursuant to Section 7(c).

Section 5. Real Property Taxes

(a) In addition to all rentals due under this Lease, Tenant shall pay to Landlord Tenant's pro rata share of the annual real estate taxes and taxes in lieu of real estate taxes, and assessments levied upon the Property including any parking and common area of the Property (collectively, "Real Estate Taxes"). This amount shall be payable within ten (10) days after receipt of a semi-annual statement to be sent by Landlord to Tenant setting forth the amount of the Real Estate Taxes based upon the actual tax bill received by Landlord; or Landlord at Landlord's option shall have the right to estimate the amount of taxes next due and to collect and impound from Tenant on a monthly or quarterly basis the amount of Tenant's estimated tax obligation, as set forth in Section 38.

(b) Tenant's pro rata share of the Real Estate Taxes shall be determined by multiplying the Real Estate Taxes for the Property by the ratio that the gross floor area of the Leased Premises bears to the total gross leasable floor area of the Property.

(c) Any Real Estate Tax for the year in which this Lease commences or ends shall be apportioned and adjusted based upon the number of months or portions of months in which Tenant occupies the Leased Premises. With respect to any assessment that may be levied against or upon the Leased Premises and which, under the laws then in force, may be evidenced by improvement or other bonds, payable in equal installments, only the annual payments on this assessment shall be included in computing Tenant's obligation for taxes and assessments.

(d) The term "Real Estate Taxes" as used in this Lease shall be deemed to mean all taxes imposed upon the real property and permanent improvements constituting the Leased Premises and all assessments levied against the Property, but shall not include personal income taxes, personal property taxes, inheritance taxes, or franchise taxes levied against Landlord, but not directly against the Property even though these taxes shall become a lien against the Property.

(e) Tenant shall pay to Landlord all excise, privilege, and other taxes, other than net income and estate taxes levied or assessed by any federal, state, or local authority upon the rent

received by Landlord under this Lease, and Tenant shall bear any business tax imposed upon Landlord by any governmental authority that is based or measured in whole or in part by amounts charged or received by Landlord from Tenant under this Lease.

Section 6. Personal Property Taxes

During the term, Tenant shall pay all taxes against and levied upon fixtures, furnishings, equipment, and all other personal property of Tenant contained in the Leased Premises prior to delinquency, and when possible Tenant shall cause these fixtures, furnishings, equipment, and other personal property to be assessed and billed separately from the real property of Landlord. If any of Tenant's fixtures, furnishings, equipment, and other personal property is assessed and taxed with Landlord's real property, Tenant shall pay to Landlord Tenant's share of the taxes within ten (10) days after delivery to Tenant by Landlord of a statement in writing setting forth the amount of the taxes applicable to Tenant's property.

Section 7. Reserved.

Section 8. Uses Prohibited

Tenant shall not use, nor permit the Leased Premises, nor any part of the Leased Premises, to be used for any purpose other than the purpose set forth in Section 2. No use shall be made or permitted to be made of the Leased Premises, nor acts done, that will increase the existing rate of insurance upon the Property (once this rate is established), or cause a cancellation of any insurance policy covering the Property or any part of the Property, nor shall Tenant sell or permit to be kept, used, or sold in or about the Leased Premises any article that may be prohibited by standard from of fire insurance policies. Tenant shall, at Tenant's sole cost, comply with all requirements pertaining to the use of the Leased Premises, of any insurance organization or company necessary for the maintenance of reasonable fire and public liability insurance, covering the building and appurtenances. If Tenant's use of the Premises, as recited in Section 2, results in a rate increase for the building of which the Leased Premises are a part, Tenant shall pay annually on the anniversary date of this Lease, as additional rent, a sum equal to that of the additional premium occasioned by the rate increase.

Section 9. Alterations

Tenant shall not make or suffer to be made, any alterations of the Leased Premises, or any part of the Leased Premises, without the prior written consent of Landlord, and any additions to, or alterations of, the Leased Premises, except movable furniture and trade fixtures, shall become at one a part of the realty and belong to the Landlord. Any alterations shall be in conformance with the requirements of all municipal, state, and federal authorities. Tenant shall not erect any wall or obstruction preventing full view in or out of any store window in the Leased Premises. Tenant agrees promptly to fixturize the store in a manner comparable to a store of similar nature.

Section 10. Maintenance and Repair

(a) Tenant acknowledges that Tenant is leasing the Leased Premises on an "as is" basis. Tenant shall, subject to Landlord's obligations under this Lease, at all times during the Term, and at Tenant's sole cost and expense, keep, maintain, and repair the building and other improvements upon the Leased Premises in good and sanitary order and condition (except as otherwise provided in this Lease) including without limitation, the maintenance and repair of any store front, doors, window casements, glazing, plumbing, pipes, electrical wiring, and conduits, and the heating and air conditioning system (if any) including the maintenance of a service contract with a heating and air conditioning contractor approved by Landlord. Landlord will pass through all contractor's equipment warranties to Tenant for the term of those warranties. Tenant shall also at Tenant's sole cost be responsible for any alterations or improvements to the Leased Premises necessitated as a result of the requirement of any municipal, state, or federal authority. By entering into the Leased Premises, Tenant shall be deemed to have accepted the Leased Premises as being in good and sanitary order, condition, and repair, and Tenant agrees on the last day of the Term or sooner termination of this Lease to surrender the Leased Premises with appurtenances, in the same conditions as when received, reasonable use and wear and damage by fire, act of God, or by the elements excepted. Tenant shall regularly sweep and clean the sidewalks adjacent to the Leased Premises, as needed, and shall be responsible for keeping the Leased Premises' trash enclosure free of debris.

(b) Tenant has agreed to improve the Leased Premises by replacing the existing fence located on the North, South, and East, and West boundaries of the property with a new 6' chain link fence (refer to map, exhibit); repair roof structure and new roofing material to two buildings; painting the interior and exterior of the two buildings; repairs to electrical as needed; and heating and cooling systems repaired or replaced as needed. All such work shall be completed by .

Section 11. Compliance with Law

Tenant shall, at Tenant's sole cost, comply with all of the requirements of all municipal, state, and federal authorities now in force or that may later be in force pertaining to the use of the Leased Premises, and shall faithfully observe in this use all municipal ordinances and state and federal statutes now in force or that shall later be in force. The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceeding against Tenant, whether Landlord be a party or not, that Tenant has violated any order or statute in this use, shall be conclusive of that fact as between Landlord and Tenant. Tenant shall not commit, or suffer to be committed, any waste upon the Leased Premises, or any nuisance or other act or thing that may disturb the quiet enjoyment of any other Tenant in the building in which the Leased Premises may be located.

Section 12. Landlord's Insurance

Landlord shall maintain fire and extended coverage, and at Landlord's options, earthquake insurance, throughout the Term in an amount equal to at least ninety percent (90%) of the replacement value of the building that includes the Leased Premises, together with other insurance as may be required by Landlord's lender or by any governmental agency. Tenant waives any right of recovery from Landlord, Landlord's officers and employees, and Landlord

waives any right of recovery from Tenant, Tenant's officers or employees, for any loss or damage (including consequential loss) resulting from any of the perils insured against in the standard form fire insurance policy with extended coverage endorsement. Tenant agrees to pay to Landlord the pro rata share of the cost of this insurance, to be determined by the relationship that the gross floor area of the Leased Premises bears to the total gross leasable floor area of the building for which this policy relates. Landlord may estimate the cost of insurance and collect and impound Tenant's share of the cost as set forth in Section 38.

Section 13. Tenant's Insurance; Indemnification of Landlord

(a) During the entire Term of this Lease, Tenant shall, at Tenant's sole cost, but for the mutual benefit of Landlord and Tenant, maintain general public liability insurance against claims for personal injury, death, or property damage occurring in or about the Leased Premises and on any sidewalks directly adjacent to the Leased Premises. The limitation of liability of this insurance shall be not less than three million (\$3,000,000.00) in respect to injury or death of one person and to the limit of not less than one million (\$1,000,000.00) in respect to any one accident and to the limit of not less than one million (\$1,000,000.00) with respect to property damage. All policies of insurance shall be issued in the name of the Tenant, with Landlord listed as an additional insured, and certificates of this insurance or copies of policies shall be delivered to Landlord within ten (10) days of this date. All insurance policies shall contain a provision that a thirty (30) day prior written notice of any cancellation shall be given to Landlord and Tenant before the effective date of cancellation. Tenant agrees to provide plate glass insurance and further agrees to provide Landlord with a certificate of insurance showing coverage against plate glass damage.

(b) Tenant, as a material part of the consideration to be rendered to Landlord under this Lease, waives all claims against Landlord for damage to goods, wares, and merchandise, in, upon, or about the Leased Premises and for injuries to persons in or about the Leased Premises, from any cause arising at any time; and Tenant will defend and hold Landlord exempt and harmless from any damage or injury to any person, or goods, wares and merchandise of any person, arising from the use of the Leased Premises by Tenant, or from the failure of Tenant to keep the Leased Premises in good condition and repair, as provided in this Lease.

Section 14. Free from Liens

Tenant shall keep Leased Premises and the Property free from any liens arising out of any work performed, material furnished, or obligation incurred by Tenant.

Section 15. Abandonment

Tenant shall not vacate or abandon the Leased Premises at any time during the Term; and if Tenant shall abandon, vacate or surrender the Leased Premises or be dispossessed by process of law, or otherwise, any personal property belonging to Tenant and left on the Leased Premises shall, at the option of Landlord, be deemed abandoned.

Section 16. Signs

(a) Tenant shall not place or permit to be placed any sign or poster upon the exterior or in the windows of the Leased Premises without Landlord's prior written consent, nor shall Tenant change the color or exterior appearance of the Leased Premises without Landlord's prior written consent. Tenant must consult with the Development Services Department and obtain approval therefrom prior to placing any news signs on the Leased Premises.

(b) Tenant shall not, without Landlord's prior written consent, display or sell merchandise outside the defined exterior walls and permanent doorways of the Leased Premises. Tenant shall not conduct or permit to be conducted any sale by auction in, upon, or from the Leased Premises, whether the auction is voluntary, involuntary, or some other solvency proceeding. Tenant shall not erect any visual barriers or walls within four (4) feet of all windows.

Section 17. Utilities

Tenant shall pay before delinquency all charges for water, gas, heat, electricity, power telephone service, and all other services of utilities used in, upon, or about the Leased Premises by Tenant or any of Tenant's subtenants, licensees, or concessionaires during the Term. If any utility is not separately metered, Tenant shall reimburse Landlord for Tenant's pro rata share of the cost of the utility determined according to the gross floor area of the Leased Premises as it relates to the total gross leasable area of the portion of the Property that is separately metered and that contains the Leased Premises.

Section 18. Entry

Subject to reasonable prior notice to Tenant, Tenant shall permit Landlord and Landlord's agents to enter into and upon the Leased Premises at all reasonable times to inspect them or to maintain the building in which the Leased Premises are situated, or for making repairs, alterations, or additions to any other portion of the building, including the erection and maintenance of scaffolding, canopy, fences, and props as may be required, or for posting notices of non-liability for alterations, additions, or repairs, or for placing any usual or ordinary "For Sale" signs upon the property in which the premises are located. Landlord shall be permitted to do any of these actions without any rebate of rent and without any liability to Tenant for any loss of occupation or quiet enjoyment of the Leased Premises they might cause. Tenant shall permit Landlord, at any time within thirty (30) days prior to the expiration of this Lease, to place upon the Leased Premises any usual or ordinary "For Lease" signs, and during the thirty (30) day period, Landlord or Landlord's agents may, during normal business hours, enter upon the Leased Premises and exhibit them to prospective Tenants.

Section 19. Damage and Destruction

(a) Landlord shall make necessary repairs upon the occurrence of either:

- (i) partial destruction of the Leased Premises or the building containing the Leased Premises during the Term, requiring repairs to either the Leased Premises or the building, or
- (ii) declaration of the Leased Premises or the building containing the Leased Premises as unsafe or unfit for occupancy by any authorized public authority for any reason other than Tenant's act, use, or occupation, which declaration requires repairs either to the Leased Premises or the building.

No partial destruction, including any destruction necessary to make repairs required by any declaration made by any public authority, shall in any way void this Lease except that Tenant shall be entitled to a proportionate reduction of Monthly Rent while these repairs are being made, this proportionate reduction to be based upon the extent to which the making of these repairs shall interfere with the business carried on by Tenant in the Leased Premises.

(b) However, if the building in which the Leased Premises is located is damaged as a result of fire or any other insured casualty to an extent in excess of twenty-five percent (25%) of its then replacement cost (including foundations), Landlord may within thirty (30) days following the date the damage occurs elect not to repair the damage and terminate this Lease by written notice to Tenant.

If Landlord elects to make the repairs, and provided Landlord uses due diligence in making the repairs, this Lease shall continue in full force, and the Monthly Rent shall be proportionately reduced as provided in this Lease. If Landlord elects to terminate this Lease, all rentals shall be prorated between Landlord and Tenant as of the date of destruction.

(c) Tenant waives any statutory right to cancel this Lease due to partial or total destruction that Landlord is obligated to repair or may elect to repair under this Section 19.

Section 20. Assignment and Subletting

Tenant shall not assign this Lease or any interest in this Lease, and shall not sublet the Leased Premises or any part of them, or any right or privilege appurtenant to them, or permit any other person other than the agents and servants of Tenant to occupy or use the Leased Premises without the prior written consent of Landlord.

Section 21. Default

(a) Each of the following shall constitute an event of default ("Event of Default") under this Lease:

- (i) if Tenant fails to make any payment required by the provisions of this Lease, when due;

- (ii) if Tenant fails within thirty (30) days after written notice to correct any breach or default of the other covenants, terms or conditions of this Lease; or
- (iii) if Tenant abandons the Leased Premises before the end of the Term.

(b) Upon the occurrence of an Event of Default, Landlord shall have the right at any time afterwards to elect to terminate the Lease and Tenant's right to possession under the Lease. Upon this termination, Landlord shall have the right to recover against Tenant:

- (i) The worth at the time of award of the unpaid rent that had been earned at the time of termination;
- (ii) The worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of this rental loss that Tenant proves could have been reasonably avoided;
- (iii) The worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of this rental loss that Tenant proves could be reasonably avoided; and
- (iv) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenants failure to perform Tenant's obligations under the Lease or that in the ordinary course of things would be likely to result. The "worth at the time of award" of the amounts referred to in the previous subsections shall be computed by allowing interest at ten percent (10%) per annum. The worth at the time of award of the amount referred to in subsection (iii) shall be computed by discounting this amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

(c) Efforts Landlord may make to mitigate the damages caused by Tenant's breach of this Lease shall not constitute a waiver of Landlord's right to recover damages against Tenant, nor shall anything contained in this Lease affect Landlord's right to indemnification against Tenant for any liability arising prior to the termination of this Lease for personal injuries or property damage, and Tenant agrees to indemnify and hold Landlord harmless from any injuries and damages, including all reasonable attorney fees and costs incurred by Landlord in defending any action brought against Landlord for any recovery; and in enforcing the terms and provisions of this indemnification against Tenant.

(d) However, the breach of this Lease by Tenant, or abandonment of the Leased Premises by Tenant, shall not constitute a termination of this Lease, nor of Tenant's right of possession under this Lease, unless and until Landlord elects to do so, and until that time Landlord shall have the right to recover rent and all other payments to be made by Tenant under this Lease as they become due; provided, that landlord elects to terminate this Lease, Tenant

shall have the right to sublet the Leased Premises or to assign interests in this Lease, or both, subject to the written consent of Landlord, which consent shall not be reasonably withheld.

(e) As security for the performance by Tenant of all duties and obligations under the Lease, Tenant assigns to Landlord the right, power, and authority, during the continuance of this Lease, to collect the rents, issues, and profits of the Leased Premises, reserving to Tenant the right, prior to any breach or default by Tenant under this Lease, to collect and retain the rents, (solely in the case of a sublease previously approved by Landlord) issues, and profits, from the operation of Tenant's approved business use, as they become due and payable, and so long as payments to Landlord are also kept current. Upon any breach or default, Landlord shall have the right at any time afterward, without notice except as provided for previously, either in person, by agent, or by a receiver to be appointed by a court, enter and take possession of the Leased Premises and collect rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney fees, upon any secured indebtedness, and in an order as Landlord may determine.

(f) The parties agree that acts of maintenance or preservation or efforts to release the premises, or the appointment of a receiver upon the initiative of Landlord to protect interests under this Lease shall not constitute a termination of Tenant's right of possession for the purposes of this section unless accompanied by a written notice from Landlord to Tenant of Landlord's election to so terminate.

(g) Tenant acknowledges that Landlord has executed this Lease in reliance on the financial information furnished by Tenant to Landlord as to Tenant's financial condition. If it is determined at any time subsequent to the date of this Lease that any of the financial information furnished by Tenant is substantially untrue or inaccurate, Tenant shall be deemed to be in default under this Lease, which default shall not be subject to cure, and which shall entitle Landlord to exercise all remedies reserved to Landlord under this Lease or otherwise available to Landlord under this Lease or otherwise available to Landlord at law.

Section 22. Surrender of Lease

The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation of the Lease, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subleases or sub-tenancies, or may, at the option of Landlord, operate as an assignment to Landlord of any of the subleases or sub-tenancies.

Section 23. Sale of Property

If Landlord sells any of the Leased Premises, Landlord shall be and is entirely relieved of all liability under this Lease and of all the covenants and obligations contained in or derived from this Lease arising out of any act, occurrence, or omission occurring after the consummation of the sale; and the purchaser, at the sale of any subsequent sale of the Leased Premises, shall be deemed to have assumed and agreed to carry out any of the covenants and obligations of Landlord under this Lease.

Section 24. Operations

Subject to the provisions of Sections 19 and 31, Tenant shall continuously during the entire Lease Term conduct Tenant's business in the Leased Premises and shall keep the Leased Premises open for business and cause Tenant's business to be conducted during the usual business hours of each business day as is customary for businesses of similar character in the city in which the Leased Premises are located to be open for business; provided, however, that this provision shall not apply if the Leased Premises should be closed and the business of Tenant temporarily discontinued on account of strikes, lockouts, or similar causes beyond the reasonable control of Tenant, or closed for not more than three (3) days out of respect to the memory of any deceased officer or employee of Tenant, or a deceased relative. Tenant shall keep the Leased Premises adequately stocked with merchandise, and with sufficient sales personnel to care for the patronage, and to conduct the business in accordance with sound business practices.

Section 25. Attorney Fees.

If either Landlord or Tenant shall commence any legal proceedings against the other with respect to any of the terms and conditions of this Lease, the non-prevailing party shall pay to the other all expenses of the litigation, including reasonable attorney fees as may be fixed by the court having jurisdiction over the matter. The parties agree that the State of California is the proper jurisdiction for litigation of any matters relating to this Lease, and service sent by certified mail to the address of the parties set forth in this Lease shall be adequate service for this litigation.

Section 26. Security Deposit

(a) Tenant, contemporaneously with the execution of this Lease, has deposited with Landlord the noninterest bearing sum of \$3,000.00, receipt of which is acknowledged by Landlord, this deposit being given to secure the faithful performance by Tenant of all the terms, covenants, and conditions of this Lease by Tenant to be kept and performed during the Term. Tenant agrees that upon the occurrence of an Event of Default under this Lease, this deposit may, at the option of Landlord, be applied to any damages suffered by Landlord as a result of the Event of Default to the extent of the amount of the damages suffered.

(b) Nothing contained in this Section 26 shall in any way diminish or be construed as waiving any of Landlord's other remedies as provided in Section 21, or by law, or in equity. Should the entire security deposit or any portion be appropriated and applied by Landlord for the payment of overdue rent or other sums due and payable to Landlord by Tenant, then Tenant shall, on the written demand of Landlord, immediately remit to Landlord a sufficient amount in cash to restore the security deposit to its original amount, and Tenant's failure to do so within fifteen (15) days after receipt of this demand shall constitute a breach of this Lease. Should Tenant comply with all of the terms, covenants, and conditions of this Lease and promptly pay of all of the rental provided for as it falls due and all other sums payable by Tenant to Landlord under this Lease, this security deposit shall be returned in full to Tenant at the end of the Term or upon the earlier termination of this Lease pursuant to the provisions of Section 19, except if the Leased Premises are sold as a result of the exercise of any power of sale under any mortgage or

deed of trust, in which event this Lease shall be automatically amended to delete any reference to this Section 26, and Tenant shall be entitled to immediate reimbursement of Tenant's security deposit from the party then holding this deposit.

Section 27. Holding Over

Any holding over after the expiration of the Term, with the consent of Landlord, shall be construed to be a tenancy from month-to-month, cancellable upon thirty (30) days written notice, and a rental and upon terms and conditions as existing during the last year of the Term. Any holding over after the expiration of the Term, without the consent of Landlord, shall be construed to be a tenancy-at-will at a Monthly Rent of two hundred percent (200%) of the Monthly Rent as existing during the last year of the Term, but otherwise on the same terms and conditions of this Lease.

Section 28. Notices

Wherever in this Lease it shall be required or permitted that notice and demand be given or served by either party to the other, this notice or demand shall be given or served and shall not be deemed to have been given or served unless in writing and forwarded by certified mail, addressed as follows:

If to Landlord:	Calexico Redevelopment Agency Attn: Executive Director 608 Heber Avenue Calexico, CA 92231
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If to Tenant:	Edward Del Rial
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Either party may change this address by written notice by certified mail to the other.

Section 29. Successors in Interest

The covenants in this Lease shall, subject to the provisions as to assignment, apply to and bind the heirs; successors, executors, administrators, and assigns of all the parties to this Lease; and all of the parties to this Lease shall be jointly and severally liable.

Section 30. Tenant's Performance

If Tenant shall fail within any time limits that may be provided in this Lease to complete any work or perform any other requirements to be performed by Tenant prior to the commencement of the Term, or if Tenant shall cause a delay in the completion of any work,

Landlord may send Tenant written notice of this default and if this default is not corrected within ten (10) days afterwards, Landlord may, by written notice prior to the curing of this default, terminate this Lease. Landlord shall be entitled to retain as liquidated damages all deposits made under this Lease and these improvements as Tenant may have annexed to the realty that cannot be removed without damage.

Section 31. Force Majeure

If either party shall be delayed or prevented from the performance of any act required under this Lease by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws or regulations, or other cause without fault and beyond the control of the party obligated, performance of this act shall be excused for the period of the deal and the period for the performance of any act shall be extended for a period equivalent to the period of the delay; provided, however, nothing in this Section shall excuse Tenant from prompt payment of any rental or other charge required of Tenant except as may be provided elsewhere in this Lease.

Section 32. Partial Invalidity

If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be void or unenforceable, the remainder of the provisions of this Lease shall remain in full force and shall in no way be affected, impaired, or invalidated.

Section 33. Captions

The various headings and numbers in this Lease and the grouping of the provisions of this Lease into separate sections and paragraphs are for the convenience only and shall not be considered a part of this Lease.

Section 34. Time

Time is of the essence in this Lease.

Section 35. Subordination

(a) This Lease, at Landlord's option, shall be subordinate to the lien of any first deed of trust or first mortgage subsequently placed upon the real property of which the Leased Premises are a part, and to any advances made on the security of it, and to all renewals, modifications, consolidations, replacements, and extensions; provided, however, that as to the lien of any deed of trust or mortgage, Tenant's right to quiet possession of the premises shall not be disturbed if Tenant is not in default and so long as Tenant shall pay the rent and observe and perform all of this Lease's provisions, unless this Lease is otherwise terminated pursuant to its terms. If any mortgagee, trustee, or ground landlord shall elect to have this Lease prior to the Lien of its mortgage, deed of trust, or ground lease, and shall give written notice to Tenant, this Lease shall be deemed prior to that mortgage, deed of trust, or ground lease, whether this Lease is dated prior

or subsequent to the date of this mortgage, deed of trust, or ground lease, or the date of recording.

(b) If any foreclosure proceedings are brought, or if a power of sale under any mortgage or deed of trust made by Landlord covering Leased Premises is exercised, Tenant shall attorn to the purchaser upon any foreclosure or sale and recognize that purchaser as landlord under this Lease, provide that the purchaser shall agree that so long as no Event of Default exists under this Lease, Tenant's right to quiet possession shall not be disturbed.

(c) If upon any sale, assignment, or hypothecation of the Leased Premises by Landlord, or at any time, an estoppel certificate or financial statement shall be requested of Tenant, Tenant agrees, within ten (10) days afterwards, to deliver the financial statement or the estoppel certificate addressed to any proposed mortgagee or purchaser to Landlord certifying the requested information, including the dates of commencement and termination of this Lease, the amounts of security deposits, if any, that the Lease is in full force, and that there are no differences, offsets, or defaults of Landlord, or noting these differences, offsets or defaults actually exist. Tenant acknowledges that the mortgagee or purchaser shall have the right to rely on the estoppel certificate or financial statement. Tenant shall in the same manner acknowledge and execute any assignment of rights to receive rents as required by any mortgagee of Landlord.

Section 36. Condemnation

If a condemnation or a transfer in lieu thereof occurs on all or any portion of the Leased Premises, Landlord or Tenant may, upon written notice given within thirty (30) days after the taking or transfer in lieu thereof, terminate this Lease. Tenant shall not be entitled to share in any portion of the award, and Tenant expressly waives any right or claim to any part of the award. Tenant shall, however, have the right to claim and recover, only from the condemning authority, any amounts necessary to reimburse Tenant for the cost of removing stock and fixtures.

Section 37. No Oral Agreements

This Lease includes in full each agreement of every kind between the parties concerning the Leased Premises, and all preliminary negotiations and agreements of any kind or nature are merged in this Lease, and there are no oral agreements or implied covenants made in connection with this Lease.

Section 38. Impound for Expenses

As provided previously, Tenant is obligated to reimburse Landlord for Tenant's share of certain costs and expenses, payable as additional rent. It is agreed that, rather than bill and collect the reimbursement in arrears, Landlord may estimate Tenant's share of the costs and expenses for a period not more than twelve (12) months in advance, and may collect and impound Tenant's estimated share in advance on a monthly or quarterly basis. On or before March 15th of each year, Landlord shall prepare and provide to Tenant a reconciliation of Tenant's account for the twelve (12) month period ending the preceding January 1st. Said

reconciliation shall set forth in reasonable detail the costs and expenses paid by Landlord, and shall include a computation of Tenant's pro rata share. If Tenant has overpaid Tenant's share of costs and expenses, Landlord shall accompany the reconciliation with a refund of the overpayment, and if an underpayment occurs, Tenant shall pay to Landlord the underpayment within thirty (30) days after receipt of reconciliation.

Section 39. Tenant Improvements

Within twenty (20) business days after the execution of this Lease, Tenant shall provide Landlord with a set of plans showing Tenant's proposed improvements to the Leased Premises. Within five (5) business days after receipt of Tenant's plans, Landlord shall provide Tenant with written approval or disapproval of the improvements. Landlord shall file a notice of non-responsibility prior to the start of any improvements. Prior to the commencement of improvements by Tenant, Tenant shall either obtain a Performance and Completion Bond or obtain Unconditional Lien Releases from all persons performing labor or providing materials on or to the Leased Premises. A copy of the bonds or lien releases dated and with original signatures, shall be provided to Landlord prior to commencement of work.

Section 40. Termination of Lease by Reason of Sale

If Landlord decides to sell this property within the term of this Lease, then Landlord shall be entitled to terminate this Lease with thirty (30) days notice to Tenant. Tenant shall be allowed to submit a bid for any sale, but Landlord reserves the right to sell the property as it chooses.

Section 41. Governing Law

This Lease shall be governed by and construed in accordance with the laws of the State of California.

Section 42. Non-Discrimination

Tenant herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this Lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Leased Premises nor shall Tenant himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sub-lessees, subtenants, or vendees in the Leased Premises.

This Section 42 shall be binding upon and shall obligate Tenant and any subcontracting party or parties, or other transferees under this Lease.

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IN WITNESS WHEREOF, the parties have executed this Lease on the day and year first above written.

LANDLORD:

By: _____
Name: _____
Its: _____

TENANT:

By: _____
Name: _____
Its: _____

Site plan (not to scale)



